

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2003-000858-001 DT

03/04/2004

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED: _____

ELISE A SALANO

ELISE A SALANO
1622 S ROBERTS RD
TEMPE AZ 85281

v.

DAVID J ACEDO (001)

DAVID J ACEDO
598 W 5TH ST
TEMPE AZ 85281

REMAND DESK-LCA-CCC
TEMPE JUSTICE CT-EAST

RECORD APPEAL RULE / REMAND

This Court has jurisdiction of this appeal from and order continuing a Domestic Violence Order of Protection in full force and effect pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This case has been under advisement since its assignment on February 4, 2004. This decision is made within 60 days as required by Rule 9.9, Maricopa County Superior Court Local Rules of Practice. This Court has considered and reviewed the record submitted from the East Tempe Justice Court, and the memoranda of the parties.

Originally, it appears that Elise Salano filed a Petition for Injunction Against Harassment in the East Tempe Justice Court against her brother, David Acedo (Appellant herein). Her petition was granted as a Domestic Violence Order of Protection on July 29, 2003. Thereafter, Appellant requested a hearing which was held by the East Tempe Justice Court on August 7, 2003. The court continued the Domestic Violence Order of Protection in full force and effect.

The only issues raised by the Appellant concerns the sufficiency of evidence to warrant the order continuing the Domestic Violence Order of Protection against him. A.R.S. Section 13-3602(E) provides that the court shall issue a Domestic Violence Order of Protection if the Court determines that there is reasonable cause to believe either of the following:

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1. The Defendant may commit an act of domestic violence.
2. The Defendant has committed an act of domestic violence within the past year or within a longer period of time if the court finds that good cause exists to consider a longer period.

In this case, the court made no finding at the conclusion of the hearing that Appellant may commit an act of domestic violence or had committed an act of domestic violence within the past year. The only findings of this nature are contained on the preprinted Order of Protection form. Curiously, Appellee/Plaintiff Elise Salano did not allege an act of domestic violence in her original petition. She claimed "Acedo has caused financial hardship to me and my father, he refuses to find employment, refuses to move out." These are not acts of domestic violence. Appellee also contended in her petition that Acedo was "confrontational and a known drug user" but failed to explain or allege if the Appellant (Acedo) had made any threats to commit an act of domestic violence. Being confrontational is not in of itself an act of domestic violence. More importantly, the record of the hearing indicates that the primary reason that Appellee/Plaintiff Salano requested the Domestic Violence Order of Protection is because the Appellant has been "nothing but a burden, to my father and I. David (Appellant) and Debbie have not had steady employment for the past two years. We get no help from them whatsoever."¹ Appellant testified that he had his father's permission for he and his wife to reside in his father's home.² There is no other evidence within the record from which the trial judge could have concluded that an act of domestic violence had been committed, or may be committed.

On the facts before the trial court in this case, it appears that the trial court erred in granting the Domestic Violence Order of Protection in the first instance, and then erred again in continuing the Domestic Violence Order of Protection.

IT IS THEREFORE ORDERED vacating and reversing the order of the trial court continuing the Domestic Violence Order of Protection in this case.

IT IS FURTHER ORDERED remanding this matter back to the East Tempe Justice Court, with instructions to vacate the Domestic Violence Order of Protection previously entered in this case and for all and other future proceedings, if any.

/ s / HONORABLE MICHAEL D. JONES

JUDICIAL OFFICER OF THE SUPERIOR COURT

¹ R.T. of August 18, 2003, at page 3.

² Id. at page 5.